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NOTES OF THE WEEK

Declaration of Illegitimacy

Except for the purpose of obtaining an affiliation order, a woman is not likely to wish to bastardize her child. However, the Scottish case of *Mitchell* v. *Imre* (*The Times,* March 27) shows that a married woman may have reason to desire that a child born during her marriage be declared illegitimate. In this instance the motive was to deprive her former husband, from whom she was divorced, of the right to custody of the child, and in the court of first instance she succeeded.

The former husband appealed, and the First Division of the Court of Session set aside the decree. It was stated that there was no precedent. It was alleged that the former husband married the woman when she was pregnant and he believed he was the father of the child. This was the position accepted by the relatives also. Later there was a divorce and the husband was given custody of the child as a child of the marriage.

The Lord President, in his judgment, referred to the reluctance of the Scottish courts to brand a child as illegitimate, and to the need of strong evidence. Lord Clyde pointed out that the baptismal record showed the husband as the father, and said he was not satisfied that the mother had overcome the heavy onus of proving illegitimacy. He disregarded her evidence, and said that he was not satisfied that the evidence of blood samples was sufficient to overcome the onus of proof.

The strong presumption that a child born to a married woman during the continuance of the marriage is legitimate is evidently a respect in which English and Scots law are similar. The fact that what used to be called the rule in *Russell* v. *Russell* about evidence of non-access has been abolished by statute, does not weaken the presumption, but facilitates proof of non-access by allowing those who can give the best evidence to do so.

Addresses on Summonses

Although form 76 in the Magistrates' Courts (Forms) Rules, 1952, indicates that the address of the defendant is to be inserted in a summons, there is no such indication about the address of the complainant, but we believe that it is the common practice to insert it, and generally this is no doubt desirable.

A Scottish Judge, Lord Guthrie, referring to divorce proceedings in the Court of Sessions (*The Times,* March 19), dealt with the matter in relation to a case in that Court in which the address of each of the parties had been given as care of a firm of solicitors, and said that the Court would not allow parties to use an accommodation address in a summons in order to conceal their whereabouts. The disclosure of the correct designations was a safeguard against abuse of process and might enable an interested person to intervene.

To a certain extent the same principles may be applied to proceedings in a magistrates' court. The defendant may have good reason for wishing to know the address of the complainant and it can happen that disclosure may enable witnesses to come forth. Naturally the court must be in possession of the addresses of both parties. There are occasions in which a wife may quite properly ask to have her address kept from her husband, just as a man may wish to keep his address from his wife, in both cases through fear of annoyance or molestation. This is a matter with which the court can deal in its discretion. Lord Guthrie specifically stated that where there was justification for dispensing with the necessity of disclosing an address, such as in a case in which a party might suffer molestation, the court would not insist on the address being disclosed.

Homicide and Diminished Responsibility

When the criminal law was in the eyes of most people too harsh, both Judges and juries sometimes found means of circumventing it. Juries would find a verdict which was not really warranted by the proved facts in order to save a man from a sentence of death for a comparatively trivial offence. Today, when both the law and those who administer it are humane there is no need for this, and juries are expected to return a verdict in accordance with the evidence and without regard to the punishment that may follow.

It is very rarely that the Court of Criminal Appeal has to set aside the verdict of a jury on the ground that it is unreasonable or not in accordance with the evidence. This was, however, the result of an appeal in *R.* v. *Matheson* (*The Times*, April 2). The appellant had been convicted of capital murder, his crime being described by the Lord Chief Justice as so revolting as to be almost beyond belief. There were two grounds of appeal, one of which was that of diminished responsibility, and it was upon this that the case was decided.

In delivering judgment, the Lord Chief Justice observed that at the trial three medical witnesses were called for the defence. All of them had personally examined the appellant, and they were all agreed that though he was not insane within the meaning of the M'Naghten Rules, his mind was so abnormal as substantially to impair his mental responsibility. They did not merely repeat the words of s. 2 of the Homicide Act, but gave reasons for their opinions. No medical evidence was given by the prosecution in rebuttal. The decision in such cases, as in cases of insanity, was for the jury, and not for the doctors, but the verdict must be founded on evidence. If the evidence of the doctors was unchallenged and there was no other evidence on that issue, a verdict contrary to their opinion would not be "a true verdict in accordance with the evidence." A jury, like many other people, might think that such a man as the appellant was not fit to live and therefore return a verdict of capital murder. Parliament had altered the law, however, and decreed that if killing was committed by a person whose abnormal mind had seriously diminished his responsibility, the verdict was to be manslaughter and not murder. The Court would not say the verdict was unreasonable, but felt bound to say it was not supported by the evidence. The Court substituted a verdict of manslaughter and a sentence of 20 years' imprisonment.

The Homicide Act has already raised a number of questions and a certain amount of criticism. As was said at the time of its passing, it went as far as public opinion was prepared to go, but it has been criticized as creating some unfortunate anomalies, and does not appear to have given general satisfaction.

Road Safety Propaganda

There must be some effect from the efforts made by so many different organizations to bring home to people the need for constant alertness in traffic and the things which should and should not be done by road users of ali kinds. The Road Safety Notes published by various police forces deserve wide publicity for their concentration on matters of every day practical importance. In the February, 1958, issue of the Notes issued by the West Riding Constabulary is a photograph of two women about to cross a road, one of them having a pram which she is pushing with one hand and a small child holding her other hand. Underneath is the caption, "His life may depend on your example." This brings home to one the fact that all the safety training in schools and elsewhere may lose a good deal of its value if parents do not take the trouble to set an example by doing what the children are taught is the correct thing to do. It is, however, not uncommon to see parents with children doing quite the wrong thing when they are crossing the road, all too often because they are too impatient to wait and do the correct thing.

In this same issue are given figures for the percentage increase in the number of accidents in the West Riding shown in 1957 compared with 1938, and the percentage increase in the number of vehicles licensed in the area. The former figure is 36·4 *per cent.* and the latter 162·9 *per cent.* But this enormous increase in the number of vehicles is not a reason for accepting complacently the increase in the number of accidents; it should be a challenge to us all to try to ensure that modern convenience of travel and transport need not be accompanied by the appalling slaughter and injury, examples of which are reported daily in the press without exciting comment unless some well-known person is involved or the details are particularly gruesome. The propaganda and training in schools seems to be having a beneficial effect, and we need some method of bringing home the same lessons to adults.

Giving Way to Major Road Traffic

"Halt Major Road Ahead" signs are valuable, at difficult junctions, to force traffic from the side turning to come out on to the major road only after having a chance to see what traffic there is on that road. The Essex Road Safety Bulletin for March, 1958, makes a feature of the need always to give way to major road traffic, quoting from the Highway Code "At a road junction give way to traffic on the major road—if in doubt, give way." To give point to the advice the bulletin notes that two fatal accidents to pedal cyclists were caused in Essex during February by their turning out of a side road into another road and colliding with passing traffic. It is stated that "a cyclist will often turn left into a main road without stopping, presumably because he feels that other traffic can pass him without swerving. This is not always the case, however, and if there is traffic in both directions such an action may easily cause an accident." From the cyclist's point of view this is advice to be taken very much to heart because in any such accident he is likely to come off worst.

In the same bulletin are reported Essex accident figures, for the month of February, for the years 1955, 56 and 57. The number of accidents reported were 896, 877 and 686 respectively. Despite the welcome drop in the 1957 figure the number of casualties did not decrease in anything like the same proportion, illustrating, as we have often said, that it is a matter of chance when an accident occurs whether anyone is hurt and, if so, whether the injury is fatal, serious or slight.

The Lorry-drivers' "Flashing Light Code"

Although we do not pretend to know what the "code" (if it can rightly be so described) is, there is no doubt that drivers at night receive signals from heavy vehicle drivers given by means of their headlamps which are intended to convey to other drivers what the intentions of the signalling driver are. Frequently, we believe, the signal is one inviting the other driver to proceed whilst the lorry driver gives way to him. We read in *The Birmingham Post* of March 21, that the Shropshire and Staffordshire Federation of the Royal Society for the Prevention of Accidents has decided to ask the Minister of Transport to publicize this code "so that all road users should know what each signal means." It was stated by one member that the signals had been tried and developed over some years by road transport drivers, who obviously find them useful.

We do not feel that we know enough about the matter to offer an opinion on the merits of the general adoption of such a code, but if the signals prove of value to a certain class of drivers there seems to be good reason for considering whether their use can be extended. We imagine that the authorities would wish to be satisfied that there is no danger of the signals being such that a driver might unwittingly give one

without having any intention of doing so because this could lead to accidents rather than to preventing them. We may hear more of this matter later.

Witnesses Out of Court

It is a recognized and sensible practice for witnesses to be excluded from the court room until they have given evidence and then not to leave until they have the permission of the court. To allow the witnesses to hear what others have said and what questions they have been asked in cross-examination would open the way to deception of the court by witnesses who could alter their evidence so as to make it agree with what they had heard other witnesses say, and would forearm them against disconcerting cross-examination. Exceptions to the rule are often made in the case of professional and expert witnesses, by general consent, on the basis that they are not partisans and are not subject to the usual objections in this respect.

It is not much use to keep witnesses out of court if from the waiting-room or other accommodation provided for them they can hear most of what is being said in the court room. From the *East Anglian Daily Times* we learn that a change of arrangements is being made at the Harwich magistrates' court because it has been shown that if witnesses speak loudly and clearly they can be heard in the waiting-room. The husband of a woman who had to give evidence said he could hear her cross-examination and that of other witnesses. He very properly brought the facts to the notice of the authorities, and the matter has been put right.

The Driver's Own Responsibility

The stipendiary magistrate at Middlesbrough is reported in the *Newcastle Journal* of March 20 to have told a motor car driver "One can use a wife for many purposes, but not for driving a car." The occasion for this comment was the appearance before him of a defendant who was charged with driving without due care and attention. His advocate told the court that when he arrived in his car at a road junction "he looked right and his wife looked left." The defendant was found guilty and was fined £5. The details of the incident which led to his conviction are not given in the report.

Many drivers will probably admit that when they have a passenger in the front seat with them whose judgment they rely upon they are inclined, in circumstances when from his position his view of a particular part of the road is better than their's, to accept his statement that the road is clear and to drive accordingly. This may be a natural thing to do, but every driver must remember that he is in control of the car and that he must rely on his own vision and judgment and not on that of his passenger. It is another matter if his passenger warns him of some possible danger; any driver would be wise to take heed of this even if the warning may prove not to have been strictly necessary, but to accept the passenger's word that it is "all clear" is taking a risk which, as in the case to which we have referred, may lead to trouble.

Helping, or not helping, the Police

When a police officer, relating the antecedents and other particulars of a convicted prisoner, tells the court that the prisoner has given the police all the assistance he could, that is generally taken as in his favour and not unlikely to result in a less severe sentence than he might otherwise have received. A man's motive for telling the police where to find stolen property, what crimes he has committed or who were his accomplices, may be that he hopes thus to do himself some good, or that now he is caught he might as well do what he can to recompense those he has injured by his offences, or even that if he is to be punished he does not see why those who were in it with him should not also receive their deserts. At all events, it is desirable that the police should receive this kind of assistance, and as a matter of expediency it may be well that courts should recognize this, although it cannot be, as it were, a matter of bargaining.

If assistance is to result in a measure of leniency, is refusal to help the police to be visited with an enhanced penalty? The answer is found in the decision of the Court of Criminal Appeal in *R.* v. *Wills* (*The Times*, April 3). The appellant had been indicted for stealing and receiving, and was acquitted of stealing but convicted of receiving. The amount of property involved was of small value, but the prisoner had had six appearances in juvenile courts and had been to borstal. At quarter sessions he was sentenced to four years, and appealed against sentence.

The Lord Chief Justice, delivering the judgment of the Court reducing the sentence to 12 months, referred to the appellant's record and to the small value of the property, and also to the fact that the magistrates, in giving their reasons to the court, stated that the appellant had prevented the arrest of the thief by refusing to give information to the police. Lord Goddard said the Court really could not agree that because a man refused to "split" on his friend his sentence should be increased.

It seems to us that the correct way of looking at this question of assisting the police by giving information is that a court should decide what is the appropriate sentence apart from this point, and if the prisoner has refused to give information that sentence should be passed without any increase. If, however, it appears that the police have been helped, then the court may consider whether it is thereby justified in mitigating the sentence.

Stating the Reason

Magistrates' courts are accustomed to the need for stating reasons for such decisions as the refusal to grant time for payment of a fine, the imposition of alternative imprisonment when granting time for payment, or for imposing imprisonment on a person under 21. It also devolves upon them to state their reasons when there is an appeal to the High Court under the Summary Jurisdiction (Separation and Maintenance) Acts.

Courts of quarter sessions are not so often required to give reasons, but s. 17 of the Criminal Justice Act, 1948, requires them to state their reasons when they impose imprisonment on a person under 21. This was overlooked in the case of *R.* v. *Tuppin and Taylor* which came before the Court of Criminal Appeal on April 2. The appellants had been sentenced each to two years' imprisonment. Both were 19 years of age. Leave to appeal against sentence had been granted in order to call attention to the fact that the recorder had not stated his reasons for imposing imprisonment. The Court reduced one sentence to 18 months and confirmed the other, finding that, having regard to the gravity of the offence and the records of the appellants it was not wrong to impose imprisonment.

The Lord Chief Justice emphasized the importance in such cases of stating reasons why no other form of treatment was appropriate. Apparently the recorder had in a letter to the Court given reasons which justified the course taken and could have been stated at the time when sentence was passed.

A magistrates' court is not likely to overlook this point, because s. 107 (3) of the Magistrates' Courts Act, 1952, requires the reason for imposing imprisonment to be stated in the court

register and in the warrant of commitment. If the chairman should forget to state his reason, the clerk, who is responsible for putting things into writing, would be certain to remind him.

Guardianship Orders: Stay Pending Appeal

It is frequently emphasized that magistrates are creatures of statute and must rely on statutory authority for practically everything they do. Unlike the Judges of the High Court, they are possessed of little in the way of inherent powers. This is exemplified in the exercise of jurisdiction over infants, where a Judge has ancient inherent power while magistrates are limited to powers conferred by the Guardianship of Infants Acts.

These considerations prompted a learned correspondent to write to us about our note at p. 181, *ante*, suggesting that many clerks to justices might feel doubt about taking it for granted that justices can suspend an order of custody.

Our correspondent wrote before the full report of the case of *Re S.* (*an infant*) [1958] 1 All E.R. 783 was available. From this report it is clear that, whether or not there was any argument on the point, the learned Judge was expressing his considered opinion on a matter to which he attached so much importance that he heard the case in open court. There can be no doubt, therefore, that justices ought to give effect to the pronouncement and treat it as a binding authority unless on some future occasion a different view should be taken by the Court of Appeal.

Discretion as to Stay

The learned Judge said that no doubt there were cases in which it would be quite right to refuse any stay of an order transferring the custody of the child from one parent to the other, but he added that where there was no urgency for the transfer, it was not normally in the interests of the infant to refuse a reasonable stay pending appeal if the magistrates were satisfied that there was a genuine intention to appeal. Further, even if they thought that they ought to refuse a stay, then, unless there was an even greater sense of urgency, they ought not to make the order to take effect *instanter* as distinct from, say, seven days hence. This would allow time for an application to be made to the High Court for a stay pending the appeal.

River Boards' Association

We receive every year reports from a number of river boards, and other bodies which are associated with the conservation and improvement of rivers in this country, and we try to find space for noticing distinguishing features of their activities. Editorially, we have spoken a good many times of the important work done by these bodies, and have regretted that local authorities should still be responsible for so large a part of the pollution which continues. It is a pleasure, therefore, to notice the year book for 1957 of the Association,* which covers wider ground than can be done by any single river board, and contains technical and professional information on research and developments of water engineering. It also contains essays upon ecology and such matters as fish hatching. Several of its articles provide fascinating reading, for which it is not necessary to possess specialized scientific knowledge. There is also a collection of decided cases bearing upon river pollution, some of which are not to be found in the ordinary law reports. Not merely persons professionally or directly concerned, but also members of the general public, could find a great deal to interest them in this publication.

* The River Boards' Association, 15 Great College Street, London, S.W.1. Price 5*s*.

The Severn Bridge

Highway authorities are faced with enormous difficulties in getting authorization to proceed with schemes of road and bridge improvement, although this fact is often overlooked, or conveniently forgotten, by their critics.

The proposed Severn Bridge is an excellent example. Its history of frustration goes back to before the last war: here we touch only on a few points from the post-war history of the scheme.

The proposed site of the bridge is between Beachley and Aust at a point where a car ferry now operates. Any readers who may have waited for lengthy periods to cross this ferry in summer, or who, dismayed by the long lines of waiting vehicles, have decided to journey up to Gloucester on one side of the river and down on the other, thus adding some 50 miles to their journeys, will have no doubt about the necessity for a bridge. And, of course, additional to the private motorist and at least of equal importance is the commercial traffic, much of which in any case must now détour because size or other factors forbid the use of the ferry.

It was as long ago as 1947 that the then Minister of Transport made a trunk road order which included provision for the construction of bridges over the rivers Severn and Wye. Since then numerous requests, by deputation and otherwise, have been made that the construction of the bridge should be allowed to proceed. The highway authorities on both sides of the river, including the county councils of Glamorgan, Gloucester and Monmouth, and the county boroughs of Bristol, Cardiff, Newport and Swansea, have combined with representatives of the British Road Federation, the Trades Union Congress, industrial associations and chambers of commerce to press the case. They have been met with objections to present action and promises for the future. Finance was naturally of prime importance. The authorities were told that progress would only be possible if the bridge was financed by tolls: they went away and in spite of first objections from those who disliked the principle of tolls eventually secured agreement that the bridge should be financed by this method. Then the economic position of the country was made the ground of objection and shortage of steel and cement were quoted.

And now the Minister of Transport has spoken on the subject again. On March 3 at the inauguration of the Ross Spur Motorway he said ". . . you will I know see how it (the Severn Bridge) fits ultimately into one of my five main trunk priorities, and South Wales radial road from London. But it is a very expensive scheme . . . we must phase its construction with the many other demands on our economy."

On March 12 when the Minister announced in the House authorization to proceed with the Tyne Tunnel, Mr. J. Callaghan said that in 1947 the Severn Bridge had top priority and inquired what had happened since. Mr. Watkinson said "I think that what has happened is obvious . . . These priorities are being examined carefully . . ."

The whole history of the project is thus a striking commentary on the difficulties of a country whose resources are insufficient to meet demands upon them. And this major weakness brings other problems, not least that of the incurring of unproductive administrative cost of various kinds as a result of the sort of procedure which scarce resources force upon the local authorities and the Government.

Rating of Charities

Our note at p. 181, *ante*, about the rating of charities and similar properties at Hove, had gone to press before we received the circular of March 13 from

the Ministry of Housing and Local Government, on the same subject. The town council of Hove are to be commended for a pioneer effort to rationalize the position locally, but we have thought for years that the whole subject ought to be considered afresh by Parliament. Special treatment for purposes of rating has been accorded to property used for charitable and similar purposes since early in the nineteenth century, at least. Sometimes a case could be made out for this, upon the ground that work was being done at the cost of charitable persons, which otherwise would have had to be paid for by the ratepayers. Sometimes the work done would not in any event have been paid for out of public funds, but Parliament decided to subsidize it indirectly at the expense of the ratepayers, on the ground that it conferred benefit upon the public. On the whole, ratepayers have acquiesced, even though they might not themselves favour Sunday schools, scientific societies, or other beneficiaries. By the end of the century, again, a widespread practice had grown up of sympathetic assessment of hospitals and some other properties. The crazy pattern of benevolence at the ratepayers' expense which had grown up in this way was made worse instead of better, by the Rating and Valuation (Miscellaneous Provisions) Act, 1955. Since s. 8 of that Act came into effect a lunatic procession of fine distinctions has paraded through the courts, to be stopped (perhaps) in part by the Recreational Charities Act, 1958, which received Royal Assent on the same day as the Minister's circular was issued. The terms of reference of the new committee seem ambiguous. They are to collect facts, and the circular asks rating authorities and county councils to provide full information about the present practice. The collection of facts ought certainly to be a prelude to any legislation. It is at least possible that s. 8 of the Act of 1955 would not have led to so much litigation, if more facts had been in the Government's hands before the section was enacted. The second part of the new committee's reference is, however to advise on the proper treatment for rating of hereditaments occupied for charitable and similar purposes, and we are not sure how far it is intended that the committee shall consider the underlying principle of granting relief from rates to selected occupiers. This principle amounts to compelling the ratepayer to subscribe to purposes with which he may be out of sympathy, and sooner or later, Parliament will have to decide whether this principle has gone too far.

SOME NOTES ON SOUTH AFRICAN CRIMINAL LAW

The issue of a new edition (the sixth) of Gardiner and Lansdown's *South African Criminal Law and Procedure**, affords the opportunity to make some comparisons and contrasts between criminal law in the Union and in this country.

This work, originally written by two Judges and published in 1918 is recognized as the standard authoritative book on the subject. Owing to his great age and failing health the former Mr. Justice Lansdown was unable to complete his work on this latest edition, but he took an interest in it until a week before his death. The editors of this edition are Mr. William G. Hoal, Q.C., who died shortly before the publication and Mr. Alfred V. Lansdown, Advocate.

As was stated in the preface to the first edition South African criminal law is of composite and complex structure based on the Roman-Dutch system, but influenced markedly, especially in matters of procedure by English forms and practice. After the Cape Colony was ceded to Great Britain in 1814 the criminal law of the Cape soon came under the influence of, and was modified by, the law of England. Eventually there was evolved a body of common law well adapted to the conditions and circumstances of South Africa, which, whether in its several parts Roman-Dutch or English in origin, may properly be called and accepted as the common law of South Africa. It is not surprising, therefore, that though there are many close similarities between South African and English criminal law and procedure, there are some considerable differences.

RESPONSIBILITY OF CHILDREN

In South Africa a child under seven is held incapable of crime and between seven and 14 there is a rebuttable presumption that they are *doli incapaces*. There is a wealth of decided cases on this point, and in general the law appears to be much the same as in England, with possibly the additional feature that where native children may be less intelligent or educated than white children this fact is taken into consideration. A case is quoted in which two native boys aged eight and nine respectively had, in their own words, " built a kraal across a road," and a conviction for placing stones across the road and thus endangering a motor-car, was quashed in the absence of indication that they knew the act was wrong. Whether if two bright little English boys had acted similarly in this country they would have been found guilty of an offence is a matter of speculation. It is at all events clear that in South African law the presumption that a person intends the reasonable and probable consequences of his unlawful act cannot be applied to a child between the ages of seven and 14 years: the Crown must show affirmatively that the child knew what the reasonable and probable consequences of his act would be.

INSANITY AND MENTAL DEFICIENCY

In South African criminal law no distinction is drawn between idiocy, lunacy, mania, paranoia, melancholia, hypochondria, dementia, or any other species into which the various forms of mental aberration or defect may be classified by medical scientists, and the same test of criminal responsibility must be applied.

After referring to the M'Naghten Rules and the case of *R.* v. *True* (1922) 16 Cr. App. R. 164, the editors go on to say that in South African law the capacity to distinguish between right and wrong is not the sole test of responsibility: the limits of excusability are extended so as to embrace the case where, although the person whose conduct is in question knew that what he was doing was wrong, he was, by reason of mental disease, the subject of an impulse which it was beyond the power of his will to control in reference to that conduct. In English law, they point out, irresistable impulse affords no excuse. Since they wrote, s. 2 of the Homicide Act, 1957, has made provision for a defence of diminished responsibility in the case of a charge of murder.

Another important point upon which South African law differs from English is that if at any time during a preparatory examination or on arraignment or during the trial of any person charged with a criminal offence, it appears to the Judge, magistrate or other judicial officer presiding that such a person is mentally disordered or defective the question of such person's mental condition shall be inquired into by the magistrate or judicial officer, or if the trial be by jury by a jury specially empanelled for the purpose.

* Juta and Company, P.O. Box 30, Cape Town. Price if purchased outside Cape Town £12 19*s.* 6*d.* Postage and packing 7*s.* 6*d.* extra. (Two vols.).

Moreover, the police may cause any person arrested on any charge to be examined by a psychiatrist in order to ascertain whether or not he has abnormal or unusual mental characteristics.

CONFESSIONS

As in this country, a voluntary confession made by an accused may generally be given in evidence, but this is subject to an important limitation. By statute if a confession is shown to have been made to a peace officer other than a magistrate or justice, it shall not be admissible in evidence, *i.e.*, as a confession —unless it was confirmed and reduced to writing in the presence of a magistrate or justice. Such a confession can, however, become admissible, in certain circumstances where it may be in the interest of the accused. The English rule about confessions induced by threat or promise on the part of some person in authority is not fully established in South Africa, where the law recognizes that it is the proper course not to confine the possibility of the exercise of undue influence to persons in authority, but to recognize that such influence may be exercised by a person not in that position. It is considered, not unreasonably, that a person not in authority may sometimes be in a position to exercise undue influence by some inducement.

TAKING AND USING AS AN OFFENCE

In their preface the editors refer to a question, now definitely settled, whether *furtum usus* was a criminal offence in South African jurisprudence (save where explicit statutory provision, as in the Motor Ordinances of the various Provinces, provides otherwise). The position, under an Act of 1956, is that a taking from the owner or controller is an offence notwithstanding that the taking was with the intention of returning the thing after it had fulfilled the purpose of the taker, unless it is proved that he had a *bona fide* claim of right or reasonable grounds for believing that the owner or controller would have consented to the use if he had known about it. A person charged with theft may be found guilty of a contravention of this statutory provision. There is an obvious analogy here with s. 28 of the English Road Traffic Act, 1930, but the principle that it is an offence to take another man's property for the purpose of using it but without the intention of keeping it applies generally in South Africa and there is a good deal of sense in it.

PUBLIC PROSECUTORS

In South Africa local public prosecutors appear to have somewhat similar functions to those of the procurator fiscal in Scotland, and all prosecutions, apart from those instituted by certain local government and public authorities, are public prosecutions. At superior courts, the Attorney-General either appears himself or is represented by a duly authorized delegate who need not be counsel entitled to audience. At an inferior court trial the Crown is represented by the local public prosecutor, or any other person delegated by the Attorney-General or failing the public prosecutor or any such delegate, by some fit and proper person designated in writing by the officer presiding over the court. Otherwise it is irregular for a private practitioner to appear to prosecute.

If it appears to the public prosecutor that by reason of the gravity of the offence or the criminal record of the accused the case ought not to be dealt with summarily the facts are reported to the Attorney-General for him to decide whether the case is one proper for prosecution, and if so whether it should be brought before a superior court or one of the inferior courts.

Apparently, however, there is in many cases a preparatory examination, at which the accused is summoned to be present before the facts are submitted to the Attorney-General.

THE INFERIOR COURTS

Magistrates have jurisdiction in regional courts and, with lesser powers in magistrates' courts for districts. The Minister of Justice may also appoint special justices of the peace who have the same jurisdiction as a magistrates' court has in a magistrates' district to try certain types of case. Regional magistrates must possess a law degree or other qualification.

JUDGE AND JURY

The present position under South African law is that a person committed for trial is tried by a Judge without a jury unless he demands a jury in which case he is tried by a Judge and a jury of nine men, but a woman or any person under the age of 18 may demand trial by a jury of women. Generally, in a non-jury trial, the Judge may summon to sit with him as assessor or assessors at the trial, any person who has, or any two persons who have, in his opinion, experience in the administration of justice, or skill in any matter which may have to be considered. In certain grave cases the Judge is required to sit with assessors.

EXCUSAL OF ATTENDANCE BY ACCUSED

Subject to certain specified conditions a person who is summoned or arrested for an offence and is due to appear at an inferior court may be given permission not to attend. One condition is that a designated official is of opinion that the court would, on conviction of the offender not impose a sentence of imprisonment or whipping or a fine exceeding £15. Another is that the accused has signed a document admitting the offence. A third is that the offender deposits with a prescribed officer such sum of money as that officer may fix, or gives security for the payment of any fine, the amount of the deposit or security not to exceed £15 or the maximum fine for the offence if that be less.

ALTERNATIVES TO IMPRISONMENT

Where a court has power to impose imprisonment otherwise than in default of payment of a fine, it may instead sentence the offender to be detained in any farm colony, work colony, refuge, rescue home or other similar institution, for any period not exceeding the period for which it might have sentenced him to imprisonment. The institutions used for this purpose come under the Department of Prisons, and are to be distinguished from certain work colonies which come under the Department of Social Welfare. These latter are not usually considered suitable for offenders.

SUSPENDED SENTENCE AND PROBATION

Subject to certain exceptions when a person is convicted of an offence sentence may be postponed for any period not exceeding three years. His release may be made subject to certain conditions inserted in a recognizance to appear at the expiration of the stated period. The conditions may include compensation, the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss, submission to instruction or treatment, or compulsory attendance at some centre. Alternatively, the court may pass sentence and suspend it for a period not exceeding three years' subject to similar conditions. If a fine is imposed, enforcement may be suspended for a period not exceeding three years. The court has also power to discharge the offender with a caution or reprimand.

When imprisonment has been ordered in default of payment of a fine the court may at any stage suspend the imprisonment and release the defaulter on conditions as to the payment of the fine or unpaid balance, which may include his taking up a

specified employment and payment of the fine in instalments by the defaulter, or his employer, or otherwise.

Suspended or postponed sentence may be accompanied by probation if the court considers that there is some prospect of care or supervision conducing to the reformation or benefit of the offender. Among the conditions the court may include when probation is ordered may be mentioned, that the probationer shall not drink intoxicating liquor (a condition which in this country is often criticized as too difficult to enforce) and where specially ordered by the court, to allow the probation officer to receive his wages from his employers periodically as they become due and to administer the same for the benefit of himself and his family.

JUVENILES

In South Africa children's courts have been established which sit in a room other than those in which ordinary courts are held, and special appointments may be made in connexion with the constitution of such courts. For children's court purposes a child is a person under the age of 19. There is also a definition of child in need of care which is somewhat similar to the English definition of a juvenile in need of care or protection.

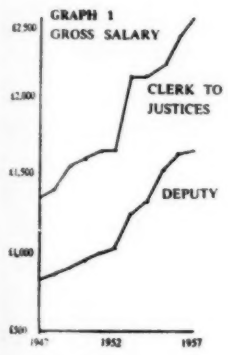
The presiding magistrate, who is a commissioner of child welfare may call in an assessor or two assessors whom he considers to be experienced in any matter which may arise for decision, but the determination must be that of the presiding commissioner himself.

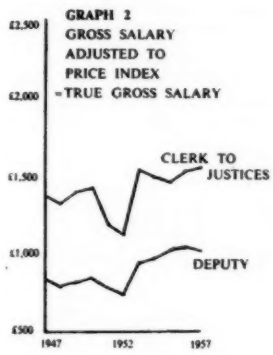
With regard to juveniles charged with offences the law provides that if the magistrate holding a preparatory examination against a person under the age of 19 is of opinion that the child is "in need of care," and that it is desirable to deal with him in a children's court he may, with the consent of the prosecutor, at any stage before committal, stay the proceedings and order that the child be brought before a children's court to be dealt with accordingly.

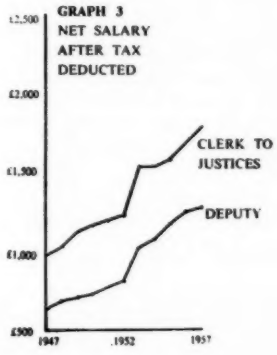
THE STATUS QUO

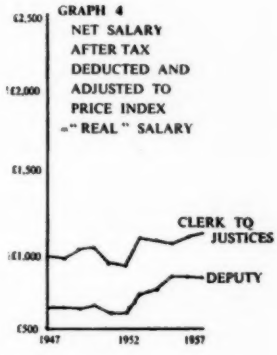
By A. N. MURDOCH, M.A., *Clerk to the Justices of the City of Coventry*

The facts following are the result of research into the salaries of a clerk to justices and his deputy in a county borough of just over a quarter of a million population. After previous service elsewhere these two officers commenced their service in this borough on the same day in 1946 on the minimum of their respective salary scales and so no adjustment has had to be made for either being at a different stage of development from the other. The only fiction created is to make the calculations on the basis of both being married without dependent children. This is done so that a comparison can be made. The conclusions are in some measure common to all who have had salary increases since the war. In terms of real salaries real incomes are vastly different from gross salaries. It is the spending value of the salary received which matters to the individual and it is that which is called real salary.









It will be seen that between 1950 and 1952 the gross salaries rose but as adjusted to the price index they were "Irishmen's" rises. The position in 1957 is less favourable than it should have been in 1951. Reference to salary by quoting from graph 1 is embarrassing and unjust as the true position is as set out in graph 2 and the "real" position in graph 4.

CLERK TO THE JUSTICES

Fiscal Year	*Gross Remuneration per annum*	*Retail Price Index September*	*Gross Remuneration adjusted for Price Index*	*Income Tax and Surtax Payable on Gross Remuneration*	*Net Remuneration after Tax*	*Worth of Net Remuneration adjusted for Price Index*
1	2	3	4	5	6	7
1947–48	1,360	100	1,360	403	957	957
1948–49	1,410	108	1,305	381	1,029	953
1949–50	1,560	112	1,393	435	1,125	1,005
1950–51	1,610	114	1,412	442	1,168	1,025
1951–52	1,660	128	1,297	484	1,176	919
1952–53	1,660	136	1,221	436	1,224	900
1953–54	2,125	140	1,518	594	1,531	1,094
1954–55	2,125	143	1,486	594	1,531	1,071
1955–56	2,181	150	1,454	592	1,589	1,059
1956–57	2,388	157	1,521	691	1,697	1,080
1957–58	2,500	163	1,534	704	1,796	1,102

DEPUTY CLERK TO THE JUSTICES

Fiscal Year	*Gross Remuneration per annum*	*Retail Price Index September*	*Gross Remuneration adjusted for Price Index*	*Income Tax Payable on Gross Remuneration*	*Net Remuneration after Tax*	*Worth of Net Remuneration adjusted for Price Index*
1 (*a*)	2 (*a*)	3 (*a*)	4 (*a*)	5 (*a*)	6 (*a*)	7 (*a*)
1947–48	835	100	835	206	629	629
1948–49	860	108	796	184	676	626
1949–50	900	112	804	198	702	627
1950–51	950	114	833	205	745	653
1951–52	1,000	128	781	233	767	600
1952–53	1,019	136	749	199	820	603
1953–54	1,300	140	928	282	1,018	727
1954–55	1,392	143	973	315	1,077	753
1955–56	1,517	150	1,011	339	1,178	785
1956–57	1,625	157	1,035	375	1,250	796
1957–58	1,650	163	1,012	382	1,268	778

NOTE: Tax has been calculated on the basis of a married man with no children.

In terms of real salary the Clerk to Justices (column 7 and graph 4) now is £145 better off than when he was on the minimum of the original scale 11 years ago, at which time he had increments still to come which means he is now receiving less salary than was provided for in his original scale. In short, £2,500 a year now does not realise what was provided for in 1946 by a scale rising to £1,500 when both the original and present salaries are adjusted to give the real salaries then and now. Similarly the deputy (column 7*a* and graph 4) now is £149 better off than when he was on the minimum of his original scale 11 years ago at which time he had increments still to come. In his case £1,650 a year now does not realise what was provided for in 1946 by a salary rising to £1,000 when both the original and present salaries are adjusted to give the real salaries then and now.

Comparison of graphs 1 and 2 reveals that as the gross salaries increased the cost of living increased and that as the value of the salary fell it was bolstered up with still further rises in the gross salary in efforts to retain the status quo. Comparison of graphs 1 and 3 reveals that income tax increased in direct proportion to the increase in gross income so that graph 1 repeats itself in graph 3 but lower down on the income co-ordinate. Comparison of graphs 1 and 4 reveals that while the gross salaries have been doubled the real salaries have not increased and have never even reached the level which was provided for in the scales fixed in 1946. Those who are not prepared to take adjustment for income tax into account will compare graphs 1 and 2 but as graph 4 is a repetition of 2 only lower on the income co-ordinate the same conclusion is reached that gross salaries, income tax and the cost of living have been playing leap-frog with each other, leaving real salaries out of the game. There has been no increase in recognition of increased work and responsibility which means that the apparent increase in gross salaries has been mis-used for the dual purpose of answering claims for increased salary and meeting the rise in the cost of living when, in fact, it has barely met the latter. The receipt of apparently large gross salaries is an embarrassment as it tends to obscure the true position. The graphs reveal that the differential between the clerk and the deputy has been maintained.

This is a factual statement of the case of two persons believed to be representative of many others in similar employment paid on the same nationally negotiated scales. Over the period dealt with local government officers have been paid on almost identical nationally negotiated scales and the conclusions to be drawn should be applicable to them and many others, namely that quotation of gross salaries is meaningless and increases in such are paradoxical. Expectation from increases and increments resolves itself into a hope of maintaining the status quo of real salaries.

REPORT OF THE MINISTRY OF HEALTH FOR 1956

CHIEF MEDICAL OFFICER'S REPORT

A further reduction in the death-rate from tuberculosis and the smallest number of deaths ever from diphtheria are among the satisfactory features of the nation's health in 1956 emphasized by Sir John Charles, chief medical officer of the Ministry of Health, in his annual report.

On the other hand, cancers were responsible for more deaths than in the previous year, and diseases of the vascular system, including coronary disease, recorded another rise.

There was a rise in the birth-rate, and childbirth and pregnancy are becoming safer. The number of deaths of women attributed to these conditions was 327, the lowest since statistics have been kept. The infant mortality rate, too, has reached a new low record, though perinatal mortality (stillbirths and deaths in the first week of life) still gives cause for concern.

The death-rate remained stationary, but "it is unlikely that any appreciable dimunition in this rate will take place in the near future." Indeed, says Sir John, "under present conditions we are more likely to see a rise in the general death rate than a further decline."

There was little influenza, far fewer cases of measles were notified, and whooping cough, although there were more cases than in 1955, was below average for recent years. It was an "average" year for poliomyelitis.

BIRTHS AND DEATHS

The birth-rate in 1956, at 15·7 per 1,000 population, is the highest since 1950, when it was 15·9. It compares with 15 in 1955, and is the first year since 1947 (with a minor exception in 1953) that there has been a departure from the downward trend. It is too early to assess whether this indicates a large upward fluctuation or a real change in trend. The stillbirth rate was 22·9 per 1,000 live and stillbirths. This is a fall of 0·3 per 1,000 compared with 1955.

Deaths totalled 521,331, giving a crude rate of 11·7 per 1,000 population, which was the same as for 1955. The death rate for males was lower at all ages except between 55 and 64, and for females it was lower in all groups. Diseases of the circulatory system were responsible for by far the highest percentage of deaths (37·2), and next highest (17·8) were cancer and allied diseases. Deaths due to coronary disease number 74,790, over 4,000 more than in the previous year.

The infant mortality rate at 23·7 per 1,000 related live births reached a new low level. The neonatal mortality rate (deaths under four weeks) fell from 17·3 in 1955 to 16·8.

INFECTIOUS DISEASES

For the third year in succession, no case of smallpox was reported in England and Wales. Despite this, the number of people vaccinated for the first time in 1956 was 333,800, compared with 309,016 in the previous year. The "acceptance rate" in 1956 was 38·4 *per cent.* of live births. With the development of a smallpox vaccine which will remain potent longer when kept at tropical temperatures, "the eventual elimination of smallpox from those parts of the world where it remains as an

endemic disease can now be anticipated with some confidence and in consequence, it may in due course become possible to modify the advice at present given to travellers and to parents regarding routine precautionary vaccination."

Both the number of notifications of and deaths from diphtheria were the lowest ever recorded. Notifications number 53 and fell below 100 for the first time ever, and deaths fell as low as eight. As recently as 1949 there were 1,890 notifications and 84 deaths.

There were slightly more cases of scarlet fever (33,103) than in 1955 (32,619) but considerably fewer than in any year before that. Deaths numbered only 15.

Measles notifications were 160,556; since notification was started in 1939 in only one year (1954) was the number appreciably lower. Deaths numbered 30, the lowest figure in the same period. The ratio of deaths to cases was the lowest ever—0·02—and this, says Sir John Charles, "suggests that the disease is becoming progressively weaker in its killing power."

Compared with 1955 there was an increase of some 13,000 notifications of whooping cough, and seven more deaths (95). However, the ratio of deaths to cases again declined. The disease is still more fatal in infants than at any other age and, says the chief medical officer, "if infants can be immunized at an early enough age a definite saving of life will be achieved." The British standard vaccine has properties which encourage the hope that the search for a vaccine which would be effective at an early age may have been successful.

Influenza was "moderate in incidence and mild in character." Discussing trials of influenza vaccine, Sir John says that experience at one school indicated that the vaccine gave "a significant degree of protection, more particularly when the recipients had been given the same vaccine a year previously."

Polio

The year, in which the incidence of poliomyelitis was about "normal," saw the start of the immunisation scheme. Of the 3,200 cases notified, 1,483 were of the non-paralytic variety, and Sir John Charles comments that this group "undoubtedly includes a number of non-paralytic infections due to other viruses." Evidence shows that in practice the number of paralytic cases gives a more consistent picture of the situation.

Statistics show that generally males were more liable to polio than females, and that children aged between five and 14 accounted for over 43 *per cent.* of all cases. Those aged up to four accounted for 25 *per cent.* and aged 15 and over 31 *per cent.*

The fatality rate of 4·3 per 100 notifications (there were 137 deaths) showed "a distinct improvement" on earlier years. This could be due to a change in the character of the disease or even to more accurate observation of minor degrees of paralysis, "but it may well be that better understanding of the treatment of patients with severe respiratory disease is an important factor." Most of the deaths occurred in the age group 25–35.

A special chapter summarises the history and outcomes of the immunization, and comments, "the vaccine proved to be completely safe and remarkably free from reactions."

"Typhoid fever no longer constitutes a public health problem," states Sir John, but the odd case which occurs occasionally reveals a persistence of infection in the country. There were 136 notifications, compared with 193 in the previous year, and two deaths.

There was "a gratifying decline" in notifications of paratyphoid fever. Though few people die from it, its nuisance value is great.

Notifications of dysentery again increase to the record total of 49,009. Deaths at 33 were below average. The "steady and rapid increase" from year to year "is disquieting," but fortunately the case mortality rate remains low. The disease is now in this country in the main a winter disease.

There were somewhat fewer food poisoning incidents than in 1955, but the general picture was much the same as in that year. "Until it is more widely realized by caterers that large scale cookery is a highly individual art demanding its own hygiene technique, food poisoning incidents will continue." Processed and made-up meat dishes were again the principal vehicles of infection.

TUBERCULOSIS

Both deaths from and notifications of tuberculosis showed a further fall in 1956. Deaths from all forms of tuberculosis numbered 5,375, compared with 6,492 in 1955 and 22,850 10 years ago. Of the deaths in 1956, 4,853 were from respiratory tuberculosis. The number of cases of tuberculosis notified was 35,504, a decline over the previous year of seven *per cent.*

RHEUMATISM

Steadily declining figures in deaths attributable to rheumatic fever "lend support to the belief that this disease is steadily becoming less prevalent as well as less serious in its effects." The chief medical officer writes, "there has been little progress made in the elucidation of the process underlying the condition known as chronic rheumatism, this is a disease of great social importance . . ."

CANCERS

There is a growing belief that cancers should be thought of as a group of diseases with a common link rather than as a single disease with a variety of manifestations. Of this view, Sir John Charles says, "It may direct thought into new channels and suggest new questions whose investigation may gradually lead the way to further progress . . ." He comments that ignorance of the primary cause of cancer has in the past been no obstacle to the virtual elimination of some cancers.

Recent work on the relationship of cigarette smoking to *lung cancer* confirmed earlier inferences that there is an association between the two, though its precise nature has not yet been determined.

In 1956 92,710 persons died of cancer (48,935 males and 43,775 females). Of these, 18,186 (15,615 males and 2,571 females) died of cancer of the lung, bronchus, etc. The male deaths represented a death rate of 726 per million living and the female deaths 111 per million living. In 1920 the comparable rates were 17 and 10. The increase in male deaths in the year was 5·4 *per cent.*

DENTAL HEALTH

The prevention of dental caries is a matter of great importance, says Sir John Charles, and he adds, "the most effective single means of preventing dental caries in the population seems to be the supply of adequately fluoridated water for domestic use." In this way its benefits cannot be denied to those children "whose parents are indifferent to or careless about the health of their offspring." During 1956 fluoridate was in operation in Anglesey, Kilmarnock, Watford and Andover. Examination of 12,000 children aged between five and 15 in these areas before fluoridation started showed that over 90 *per cent.* had dental caries.

CARE OF OLD PEOPLE

While the population as a whole is becoming distinctly older, it is not becoming proportionately helpless. "Marriage helps greatly to preserve working capacity and as a goodly proportion of old persons are married they are likely to make less demand for institutional care than they might do had they reached old age as lonely individuals."

Although the special services for the aged living at home continue to expand, "there is still not enough co-operation between the various statutory and voluntary agencies concerned . . ." says Sir John Charles.

BLINDNESS

At the end of 1956 there were 1,336 more blind on the register than at the end of 1955, the total being 96,019. Of this number the totally blind accounted for 3·6 *per cent.* People aged 70 and over accounted for over 50,000 of the total.

Other matters dealt with in the report include a section on mental health, where two important developments are said to have emerged from a full report on the developments in mental health: the beneficial effects of giving more freedom to patients suffering from mental disorder and the importance of the good mother in the care of the mentally subnormal child.

Nearly 7,000 persons died during 1956, as a result of domestic accidents. Over half were aged 75 years or more, but there was a further slight fall in the deaths from these causes of young children. The unguarded open fire remains the greatest menace.

A shortening of the time required for the basic training of nurses is gradually gaining acceptance. The fundamental problem—what should be the work of a nurse—has yet to be solved. The shortage of suitable candidates continues to cause concern. All the many branches of nursing make demands on the strictly limited number of candidates, so that no one branch is assured of an adequate number of entrants.

Although there has been a falling off in the number of ex-service pensioners attending limb-fitting centres, this has been more than balanced by the greater number of civilians. A high percentage of amputations are performed on account of disease, vascular conditions being responsible for over three-quarters of the total.

WHAT KIND OF MEN ARE THEY?

Barthélemy Piéchut, Mayor of Clochemerle-en-Beaujolais, seeking to serve his fellows and gratify his own ambition brought bloodshed and sacrilege to the pleasant, sun-drenched little town although he had wanted nothing more startling than the credit for providing a new public convenience.

Parallels to the strange happenings in warm France are to be found in cold Britain, although passions do not run so hot, and argument usually stops short of the physical. The great majority of councillors and aldermen languish in obscurity unless they should by chance become involved in some local issue, often a question or a project, less important than that on which Piéchut was engaged, which awakes local prejudices and venom or impinges on local freedom.

It was not so long ago that the chairman of a committee responsible for siting an abattoir in a part of a town where some of the inhabitants did not want it, returned home one evening to find a sheep's head dripping blood from his front door.

But these occurrences are rare: in general most aldermen and councillors never hit the headlines. Is this life in the shadows the kindest thing that could happen to them or do they deserve something more arduous, more exciting and more satisfying?

We have been led into this train of thought by two impending events, one the coming local government elections, the other the review of senior officers' salaries. Council members have a great deal of power to decide the level of such remuneration and, in fact, the more senior the officer the greater the discretion left to the council to decide his pay.

Many of those whose views about local government find their way into print, and also some who are silent but who know their subject even better than the scribes profess to do have a low opinion of the members of local councils. They write them off as ludicrously unable even to follow a debate with understanding; let alone speak in it with authority and helpfulness; they quote with approval Sir Ernest Simon's indictment of some members of Manchester Finance Committee, who, he said, took no trouble to appreciate what was going on, still less to examine the figures and suggestions laid before them by the officials.

Of course all members are not of this category, neither are they in that class of prestige hunters who prize the prefix "Councillor" somewhat for itself but even more as a rung on the ladder of social success and recognition. Many councillors and aldermen are earnest citizens, admittedly of varying degrees of ability. The best are the equals, and often the superiors, of the occupants of the average board room—but there are few of the best. The man of great ability usually feels that there is little worth the sacrifice of his leisure in the county or town hall. This is a view largely born of ignorance: in truth the immense business of local government is a challenge to any business man, administrator, or trade union official who has ability, determination, resourcefulness and the will to serve his fellows. But at present the apathy of the electorate persists in spite of educative efforts and is reflected in the quality of many candidates who too easily become members of local authorities.

It is obvious that all councils comprise leaders and led, with the led almost invariably in the vast majority. Usually they are silent but on rare occasions can be loudly vocal, and one of the favourite reasons for some outbursts is the level of payment received by senior officials. This is due to several reasons. A member may believe that a speech against "extravagance" which he knows is likely to be well publicised in the local press, will convince his electors that he is the kind of representative that they want. He may believe that an official whose remuneration exceeds his own should not have his differential further increased. He may be fearful of what the lodge or trades council will do to him if he votes for an increase which they have not approved. Such reasons are selfish ones. He may also believe quite honestly that no one is worth more than a limited sum per week: it used to be £5 but as the latest figure of average earnings of male adults is £12 1*s.* 6*d.* the permissible maximum has now doubtless been increased somewhat.

It will be noticed that all these views are formed without consideration or study of any of the basic facts.

On the other side are the members who have given time and thought to the problem of remuneration of all grades of employee, including those at the top. They have the facts: facts of this sort.

The ranges of salaries for chief officers were agreed in September, 1950. Since that time on average increases have been awarded ranging from 23 *per cent.* at £750 to 13 *per cent.* at £3,000.

By comparison since 1950 salaries of civil servants have increased by percentages between 30 and 50. For example:—

	1950 *Maximum*	*Present Maximum*	*Percentage Increase*
Senior Executive Officer	1,075	1,605	50
Under Secretary ..	2,500	3,250	30
Deputy Secretary ..	3,250	4,250	31
Secretary	4,500	6,000	33

Consider teachers also. In 1951, the salary of a head teacher of a secondary modern school with between 500 and 600 pupils was £930. Today it is £1,435, an increase of 53 *per cent.* In 1951 a general organizer or inspector of schools, Grade I, received £850: today the salary is £1,250, an increase of 47 *per cent.*

Or review police pay. In July, 1949, the constable on his minimum received £330: today he gets £490, an increase of 48 *per cent.* His maximum pay of £660 (now reached after nine years' service instead of 22 as in 1949) is an increase of 57 *per cent.* over 1949. Comparable increases have been given to the higher ranks.

The increases awarded to members of national boards, such as coal, gas and electricity have been made public. It is well known that officers of the boards have also received substantial increases. In this connexion the words of the Report of the Committee of Inquiry into the Electricity Supply Industry (cmd. 9672, 1956) may be recalled: "If salaries are artificially depressed . . . many serious consequences will follow and, indeed, are already becoming apparent. In the first place, men at the highest levels are being and will continue to be attracted away from the industry. Secondly, men will not be attracted into the industry either because the ultimate rewards are inadequate or, as the Minister is himself finding, because men of high talent do not consider it worthwhile to change their existing employment for service in a nationalized industry, which is continually subject to Parliamentary and public scrutiny, at the remuneration offered. Thirdly, the differentials between any two levels, from the chairman and deputy chairman downwards, are quite inadequate to overcome the cost and difficulties associated with the acceptance of new posts in different parts of the country, and therefore inhibit the movement and promotion of personnel between Boards which is essential for the efficiency and wellbeing of the industry." All this, *mutatis mutandis*, is true of local government.

It is also true that local government officers in the lower and middle grades have received quite favourable treatment compared with their seniors. An officer in the higher clerical division is now paid 50 *per cent.* more than in 1949, in A.P.T. I 67 *per cent.*, and in A.P.T. III 55 *per cent.*

When the effects of penal taxation and price changes are added to small salary increases senior officials of sizable authorities are now receiving in real income between a half and a third of what they had in 1939.

The claim by the officers side of the Joint Negotiating Committee has been referred to the Employers Sides of the Provincial Councils and in addition, the views of those authorities not represented at the provincial councils will be sought. Herein lies the test for local authority members. If petty ambition, fear, or jealousy, or honest though stupid inability to assess the importance of the jobs being done should be the dominant motives and bases for decisions about pay, the future for local government is black indeed. A crushing indictment of those who govern in council will have been delivered.

But let us hope that those of wider perception will carry the day: those persons who know that a side of the country's life which is so widespread, so far reaching and which controls so much of the country's spending as local government cannot be run other than disastrously by low grade staffs, and that local government standards of remuneration cannot without the gravest consequences be left far short of all other comparable sections of the community.

MISCELLANEOUS INFORMATION

COUNTY BOROUGH OF DUDLEY: CHIEF CONSTABLE'S REPORT ON LICENSING MATTERS FOR 1957

The total number of premises licensed for the sale of intoxicants (204) was four fewer than in 1956. This gave 316 inhabitants for each licence. The number of persons prosecuted for drunkenness was only 26; the number for 1956 was 30. In a table showing figures for 26 places, including Dudley, are given particulars of the number of persons proceeded against per 1,000 of the population. The highest figure is 2·45, and the lowest is ·30. Dudley's is the next lowest at ·40.

Five persons were prosecuted and convicted for driving motor vehicles while under the influence of drink. This was two fewer than in 1956. There were no convictions of licensees during the year.

LANCASHIRE (NO. 2) COMBINED PROBATION AREA REPORT

In his report for 1956 (*see* p. 366 in last year's volume) Mr. R. A. Swarbrick, chairman of the committee, referred to the possible absorption of the Lancashire (No. 2) combined area into a larger unit and expressed the opposition of his committee and others to the proposed amalgamation. That amalgamation is to take place. The whole of Lancashire is to be divided into three areas, and Lancashire (No. 2) is merged in a much larger area.

In his foreword, he notes with regret the increase in crime during the year, which is particularly marked in juvenile delinquency. This increase may be in part a genuine increase in juvenile crime and perhaps in part to an apparent increase due to a greater proportion of offenders being brought before the courts. Mr. Wm. E. Wotherspoon, senior probation officer, states that in one area the figure for juveniles appearing before the court is the highest ever recorded. This he attributes to an increase in the detection of offences and therefore all to the good. This has contributed to a substantial increase in the number of probation orders.

There has also been an increase in the use of probation for adult offenders, which rose to 136, including a number of cases from quarter sessions and Assizes. There was also an increased use of reports of probation officers on persons appearing in magistrates' courts, sessions and Assizes. The satisfactory cases in the over 17 age group record 63·6 *per cent.* and in the case of juveniles 78·6 *per cent.* The overall figure for satisfactory cases records 70·3 *per cent.*

ROAD ACCIDENT FIGURES FOR DECEMBER
With Totals for 1957

Accidents on the roads of Great Britain in December caused 659 deaths and 6,161 cases of serious injury. In addition 18,695 persons were slightly injured, making a total for all casualties of 25,515.

Compared with December, 1956, when petrol rationing was in force, these figures show an increase of 4,632, or 22¼ *per cent.* Deaths increased by 167, serious injuries by 1,142 and slight injuries by 3,323.

The increase of about one-third in the number of fatalities corresponds with the increase in traffic on main roads, which, according to Road Research Laboratory estimates was one-third heavier than in December, 1956.

Accidents to motor cyclists and passengers resulted in 114 deaths, an increase of 41, while fatalities among drivers of other vehicles and their passengers numbered 177, an increase of 74. The number of pedestrians killed was 299, an increase of 54, although the number of child pedestrians killed, 16, was 13 less than in the previous December. There were 62 fatalities among pedal cyclists, a decrease of seven.

The total number of persons killed on the roads of Great Britain during 1957 was 5,550. This was 183 more than in 1956. Serious injuries numbered 63,706, an increase of 2,251; and slight injuries 204,602, an increase of 3,464. The total of 273,858 for all casualties is 5,898 more than in 1956, an increase of 2¼ *per cent.*

Traffic on the main roads during the year was about the same as in 1956, as the decline during the earlier months, caused by fuel restrictions, was offset by the increase in later months.

One encouraging feature of the figures for 1957 was the continued decline in child casualties. Six hundred and twenty-nine children lost their lives in road accidents, but this was 88 less than in 1956 and the lowest annual total since records have been kept. The number of children seriously injured was 9,300 and the number of slightly injured 35,401. The total of 45,330 for all child casualties shows a decrease of 1,679.

WALSALL PROBATION REPORT

Mr. H. Wootton, chairman of the probation committee for the county borough of Walsall, in the annual report for 1957, comments on the statistics of satisfactory and unsatisfactory cases and comes to the conclusion that they show the efficiency of the probation system. He adds a word of good advice on probation for adults. The committee have found, he says, that generally speaking, if an adult is to be placed on probation it is better that a remand for inquiries should first take place, so as to enable the probation officer to assess the suitability of the offender for probation and whether he is likely to carry out the conditions of the order and co-operate. If an adult probationer is not prepared to co-operate fully then the order will be quite useless.

KIDSGROVE URBAN DISTRICT FINANCES

Kidsgrove is an urban district in Staffordshire with a population of over 18,000 in an area of 4,000 acres. In 1956–57 a rate of 17*s.* 6*d.* was levied ; a penny rate produced £500.

Mr. O. Lloyd Hurst, A.I.M.T.A., A.S.A.A., the chief financial officer, has produced a concise and clear abstract of the accounts of his authority following the general lines of the form recommended by the Institute of Municipal Treasurers and Accountants.

The general rate fund account showed a surplus on the year's working of £7,400 and the accumulated surplus reached the considerable total of £22,400. Mr. Hurst points out, however, that by March 31, 1958, it is anticipated that £8,100 will have been applied to meet capital expenditure direct from revenue.

Unlike some other authorities, Kidsgrove continued throughout the year the policy of making mortgage advances and £39,000 was advanced, raising the total outstanding to over £250,000. There was a useful surplus of £1,100 on the working of this service largely resulting from the difference between the average rate of interest on loans raised by the council and debited to the account and the higher current rates charged to borrowers and credited.

Housing continues to be one of the most important services provided by the authority. Up to March 31 last 1,603 dwellings had been provided: the total number of houses and flats in the area was 5,745. Rents meet about two-thirds of the revenue account charges: public subsidies are divided as to £34,400 paid by the National Exchequer and as to £9,500 paid by the Kidsgrove ratepayers. The council decided to continue this contribution, equivalent to the former statutory payment. On this basis the account showed a surplus of £1,400 which was transferred to the credit of the general rate fund, in partial repayment of past deficiency contributions.

Capital expenditure on housing was reduced as compared with past years but still amounted to £100,000. The council has a total loan debt of £2,660,000 of which no less than £2,600,000 relates to housing and mortgages advances.

Unlike some housing authorities the position of the Kidsgrove repairs fund is satisfactory. There was a surplus for the year and the accumulated balance now stands at £18,000, equivalent to £11 5*s.* per house.

Housing continues to be one of the most costly of services : it required a rate of 1*s.* 4*d.* in 1956–7. The only more expensive services were public lighting and refuse collection and disposal.

The council make an allowance to the chairman and for civic expenses of £230.

KENT FAMILY HELP SERVICE

The 1956 report of the medical officer of health for Kent (Dr. A. Elliott, M.D., D.P.H.) contains an account of the second year of operation of the family help service. One thousand two hundred and forty-eight children in 367 families were cared for at a cost of just under half of what would have been the cost of maintaining them by the county council. There is no doubt that this service makes a major contribution to the maintenance of family life. Arising from it, a child help service has been established to assist in the rehabilitation of problem families. The introduction of the family help service in 1955 brought much information about the social habits of difficult families, or problem families as they are often called. It was accepted that not all such families could be materially improved but it was decided that, by the placing of selected domestic helps in certain households, an attempt would be made to achieve practical measures of rehabilitation. Experience showed that the service could do a great deal to raise the living standards in problem families, but efforts at continuous rehabilitation by these services were at first nullified by the necessity of obtaining contributions towards the cost. It was found that the parents who were often unwilling, or unable to change their social habits of their own volition were not ready to make payments towards rehabilitation either in their own homes or in special rehabilitation units. It was decided therefore, that the provision of the child help service should be free although in the initial stages limitation was placed upon the period of time over which full-time or substantially full-time rehabilitative help should be given.

Since the annual report was issued the county medical officer has made a report on the first six months' working of the service. The helper sent to a family is selected with extreme care and before she begins work is fully briefed about conditions likely to be encountered. It has been found that the best type of helper are the middle-aged married women who have brought up children and belong to the same broad social group as the family they are trying to help. The main cause of the difficulties found in every home was that the mother was ignorant of basic housewifery arts and incapable of learning from her own experience. All the homes lacked essential domestic equipment and most of them had hire-purchase commitments ranging from 9*s.* to £2 19*s.* a week. The average wage of the fathers was £8 after deductions. Special care was taken to obtain objective appraisal of the progress of the family under a points system. All the evidence received shows that this service has achieved extremely good results and in a number of cases where families have been known to the health department for years its success has been surprising and unexpected in its extent.

ADDITIONS TO COMMISSIONS

SALISBURY CITY

Dr. Joan Hattersley Norris, 16 Harcourt Terrace, Salisbury.

Mrs. Aileen Mary Vallender, Pittsmead, Stratford-sub-Castle, Salisbury.

WINCHESTER CITY

Mrs. Aileen Marjorie Emmet, Chernocke House, Winchester.

Nicholas Thorn Warren, M.B.E., Harestock Cottage, Harestock, Winchester.

NEW STATUTORY INSTRUMENTS

1. **CLEAN AIR.** The Dark Smoke (Permitted Periods) Regulations, 1958.

Section 1 of the Clean Air Act, 1956, makes it an offence to emit dark smoke (as defined in the Act) from the chimney of a building, or of certain boilers or industrial plant, but provides that emissions of smoke lasting for not longer than such periods as may be specified by the Minister of Housing and Local Government by regulations shall, in such classes of case and subject to such limitations as may be so specified, be left out of account for the purposes of the section. These regulations specify the permitted emissions of smoke, but do not apply to emissions of smoke from vessels.

Coming into operation June 1, 1958. No. 498, 1958.

2. **CLEAN AIR.** The Alkali, etc., Works Order, 1958.

The discharge of certain noxious or offensive gases, smoke, grit and dust from certain types of works is subject to control under the Alkali, &c. Works Regulation Act, 1906, as extended by virtue of s. 17 of the Clean Air Act, 1956 (4 and 5 Eliz. 2, c. 52). Both the types of works and the list of gases may be added to from time to time by order of the Minister of Housing and Local Government, and this order makes the additions specified in the schedule thereto.

Coming into operation June 1, 1958. No. 497, 1958.

3. **FOOD AND DRUGS.** The Milk (Special Designations) (Specified Areas) Order, 1958.

Section 41 of the Food and Drugs Act, 1955, enables the Minister of Agriculture, Fisheries and Food and the Minister of Health, after consulting such representative organizations as appear to them substantially to represent the interests concerned, to bring into operation by order the provisions of subs. 37 (1) of the said Act, relating to the compulsory use of special designations for retail sales of milk, in any area of England and Wales in which it is not then in operation.

Representative organizations have been consulted and this order, a draft whereof was laid before Parliament in accordance with the requirements of the said Act, brings into operation the provisions of the said subs. 37 (1) in the areas specified in the schedule to the order.

Came into operation April 14, 1958. No. 485, 1958.

4. **SAFEGUARDING OF INDUSTRIES.** The Safeguarding of Industries (Exemption) (No. 2) Order, 1958.

This order exempts aircraft of the description set out in the schedule to the order from the charge of duty under the Safeguards of Industries Act, 1921, which might otherwise be payable on their importation. The order is operative for a period of six months from March 27, 1958.

Came into operation March 27, 1958. No. 476, 1958.

5. **CUSTOMS AND EXCISE.** The Import Duties (Exemptions) (No. 3) Order, 1958.

This order exempts aircraft of the description set out in the schedule to the order from duty under the Import Duties Act, 1932, for a period of six months from March 27, 1958.

Came into operation March 27, 1958. No. 475, 1958.

6. **SUPPLIES AND SERVICES.** The Coal Distribution (Amendment) Order, 1958.

This order amends the Coal Distribution Order, 1943, to enable an occupier of controlled premises to change his licensed merchant without giving reasons if he applies to the local fuel overseer between April 1 and August 31, 1958. Effect is to be given to the change from May 1, where application is made before that date, and from the day following the date on which the local fuel overseer gives notification thereof, where application is made on or after May 1, 1958.

Came into operation April 1, 1958. No. 508, 1958.

7. **PURCHASE TAX.** The Purchase Tax (No. 1) Order, 1958.

This order brings into force a new list of drugs and medicines which are free of purchase tax. The list supersedes the existing list shown in the Purchase Tax (No. 2) Order, 1957.

The new list comprises all substances and preparations exempted under that order, but certain substances formerly classified by reference to their chemical names are now entered according to the name approved by the British Pharmacopoeia Commission. Such entries in the schedule to the order, others which appear for the first time and amendments to existing entries are printed in heavy type.

Came into operation April 1, 1958. No. 466, 1958.

8. **PUBLIC SERVICE VEHICLES, TRAMCARS AND TROLLEY VEHICLES.** The Public Service Vehicles and Trolley Vehicles (Carrying Capacity) (Amendment) Regulations, 1958.

These regulations amend The Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations, 1954, so as:

(1) to prohibit standing passengers on any public service vehicle with a seating capacity for 12 passengers or less which first obtains a certificate of fitness on or after April 11, 1958, unless it is a vehicle especially constructed or adapted for the purpose of carrying standing passengers;

(2) to restrict to a maximum of 15 the number of passengers carried on public service vehicles with a seating capacity of 12 passengers; and proportionately to reduce the maximum capacity of such vehicles with a seating capacity of less than 12 passengers.

Came into operation April 11, 1958. No. 372, 1958.

9. **PUBLIC SERVICE VEHICLES, TRAMCARS AND TROLLEY VEHICLES.** The Public Service Vehicles (Conditions of Fitness) Regulations, 1958.

These regulations, which prescribe the conditions to be satisfied by a public service vehicle before a certificate of fitness (without the issue of which a vehicle may not be licensed to be used as a public service vehicle) can be obtained, consolidate with amendment the Public Service Vehicles (Conditions of Fitness) Regulations, 1941, and the amending regulations set out in the schedule.

The principal changes relate to the following matters:
(a) suspension (reg. 6);
(b) calculation of turning circle requirements (reg. 7);
(c) certain relaxations as to clearance (reg. 8) and guard rails (reg. 10);
(d) application of requirements as to side overhang to express carriages and contract carriages (reg. 11);
(e) fitting of fuel tanks (regs. 17, 18);
(f) electrical equipment (reg. 21);
(g) weight of front, back and side panels of body of open single-decked vehicles (reg. 23);
(h) height of outside staircase rails (reg. 25 (1) (d));
(i) position of exits (reg. 26 (1) (b)) and size (reg. 27 (1));
(j) height of emergency exits (reg. 28) and passages leading to them (reg. 30 (c) (1) (iii);
(k) power-assisted doors (reg. 29 (1) (h) and 30 (1) (d));
Came into operation April 11, 1958. No. 473, 1958.

MAGISTERIAL LAW IN PRACTICE

Daily Express. January 28, 1958.

COUPLE WIN FIGHT TO KEEP BABY OF A MURDERER

Father Said No—From Jail

Express Staff Reporter Frank Goldsworthy

A husband and wife won a year-long fight yesterday to make a murderer's illegitimate child their own son—the son they have cared for since three weeks after the father killed the mother.

At a county court hearing, the father, who is serving a life sentence, successfully opposed the couple's application to adopt the baby. Yesterday this decision was reversed in the Appeal Court.

The case was listed as Re "D" an infant. No names were given.

The couple sat at the back of the court and heard Mr. Arthur Lloyd Stott put their case. He said the boy was born in February, 1955. In July, 1956, the father murdered the mother. About three weeks later, the child was handed by the mother's parents to the couple.

In July, 1957, the father successfully opposed the granting of an adoption order.

At the county court he said he had intended to marry the mother. His sister would come from India to look after the child.

I love him

His statement said: "I want my sister to have my child because he is my son and I love him. That is the only reason I oppose the adoption."

Mr. Stott said the sister had not arrived from India and was not now coming.

Mr. Jonathan Sofer, for the father, said that while 15 years was the normal period of "life" imprisonment, the Home Office often released people much sooner than that. The father's family had plans for the child.

Of the father, Lord Evershed, Master of the Rolls, said: "It does not seem to have occurred to him that he had done anything particularly wrong.

"It is not normally considered a mark of affection for a child to murder the mother who is looking after it."

Generous Offer

And in his judgment, with which two other appeal Judges agreed, Lord Evershed said:

"It is quite certain that he is, and is likely to remain, in a position in which he will be quite unable to exercise any parental obligations towards the child, or in which ties of parental affection could possibly flourish at all."

Of the couple, he said: "There seems to be a great deal in their favour." There was overwhelming advantage to the child in their generous offer to take him.

After the case the couple said: "Our efforts were not important. What is important is—the boy."

Last night the murdered woman's mother said: "The couple had always wanted a child of their own. They gave my grandson a wonderful home, with all the love in the world.

"The adoption application cost them a good deal more than they could afford but they have not grudged a penny."

In *Hitchcock* v. *W.B. and F.E.B.* (1952) 116 J.P. 401; 2 All E.R. 119, it was held that in determining whether consent was unreasonably withheld within the meaning of s. 3 (1) (c) of the Adoption Act, 1950, the test was not the welfare of the child, but the attitude of the father, *i.e.*, whether the father was unreasonable, as a father, in withholding his consent; if a father had an honest desire to keep his child, and could contribute to his upkeep, he could not be said to be withholding his consent unreasonably, notwithstanding that he had no home immediately available for the child.

This report from the *Daily Express* relates to the case *Re D (an infant)* [1958] 1 All E.R. 427, in which it was held, distinguishing *Hitchcock* v. *W.B. and F.E.B.*, that a putative father had not the rights of a lawful parent, and the primary consideration governing the question whether or not the adoption order should be made was the welfare of the child; judged by that test, the adoption order should be made, the respondent's consent being dispensed with as being unreasonably withheld.

In the course of his judgment Lord Evershed, M.R., said, "The father in *Hitchcock* v. *W.B. and F.B.E.* was the father of a legitimate child, claiming as such to exercise his parental rights. In the present case, the respondent is not here as the father of a legitimate child, but as the putative father of an illegitimate child; and this court has decided in *Re M. (an infant)* [1955] 2 All E.R. 911, that the putative father of an illegitimate child, for the purpose of the Adoption Act, 1950, has not the rights of a parent. More precisely, the word "parent" in s. 2 does not comprehend the father of an illegitimate child, and so he cannot come to court and claim (as could the father of a legitimate child) to exercise the parental rights which would then belong to him."

Parker, L.J., said, "I think it is clear that in a case, such as this, of the putative father, the primary consideration, if not the only one, must be the welfare of the infant."

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Green's Death Duties. Fourth edition, by C. D. Harding, LL.B. (Lond.). Butterworth & Co. (Publishers) Ltd. Price 95*s.*, postage 2*s.* 3*d.* extra.

Essex River Board. Fifth Annual Report.

Teach Them To Live. Frances Banks. London: Max Parrish. Price 30*s.*

Tristram and Coote's Probate Practice. Second (Cumulative) Supplement to the Twentieth Edition. Butterworth & Co. (Publishers) Ltd. Price 8*s.* 6*d.*, postage 7*d.* extra.

[A.L.P.'s article has been held over.—*Ed.*]

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons Act, 1933—*Approved school order—Residence—Local authority responsible.*

Within this petty sessional division there is an approved school for boys. A boy broke out of the school and committed a series of offences, for which my court made a further approved school order. The boy was remanded to a remand home to await a vacancy in a fresh approved school and in due course the Home Office found a vacancy in a northern county and the boy has gone there.

When the proceedings were heard by my court the head master of the local approved school was summoned to appear as the guardian of the boy. Nothing was known by the court of the boy's home or parents. In fact in many cases of a similar nature which come before my court, either the boys have no parents or their whereabouts are unknown.

In the new approved school order made by my court it was stated:

"And the defendant was resident in the district of the administrative county of Loamshire. "And the offences were committed by the defendant in the district of the administrative county of Loamshire."

At that time no comment or observation was made by the local county council, whose representatives were present in the court and in fact a copy of the order was handed to them at the time.

Now the Loamshire county council have served a notice of appeal under s. 90 (2) (*a*) of the above Act appealing against the name of that council being inserted in the order as the place of residence.

It would now appear that when the original approved school order was made placing the boy in the local approved school, he and his parents were resident in one of the southern counties, and that county contributed to the boy's maintenance. Now that a fresh approved school order has been made and this county named in the order as the county of residence (because in fact the boy was resident at an approved school in this county, and the offences were committed locally) the southern county council has declined to continue to contribute towards the boy's maintenance. The boy's parents still reside in the southern county, but that southern county council contend that the original approved school order has come to an end and that a new order has been made arising out of offences committed within this county, and that this county should contribute towards the boy's maintenance.

My local county council contend that the local approved school was not in fact the boy's "place of residence" within the meaning of the Act, and that the county wherein the boy's parents reside is the real county of residence and that county should contribute.

QUARAN.

Answer.

In determining the place of residence, the period that the boy resided as an inmate of the (approved) school is to be disregarded, *see* s. 70 (2) and 90 (6) *ibid.* There is nothing in the facts as stated to show upon what the court relied for its finding that the boy was resident in the district of the Loamshire county council, nor why the boy's parents were not traced through the first approved school. As the court so found, however, the reference to the circumstance that the offences were committed in that district appears to be surplusage. Those words are appropriate only when the residence is not known, and there is then no appeal.

At the hearing of the appeal, if the Loamshire county council proves that the boy is, in fact, resident in the district of another council, the approved school order can be varied accordingly.

The decision depends on the residence of the boy. We are not aware of any authority that for the purposes of this Act a boy necessarily takes the residence of his parents.

2.—Criminal Law—*Larceny of name plate.*

A name plate for a road is screwed to a wall. Another name plate for a road is screwed to a growing tree. Both name plates are torn away by an offender and he is caught later in possession of them, having the obvious intention of keeping them permanently.

Do you consider that these offences could be regarded as "simple larceny," bearing in mind the doctrine that things attached to the realty cannot be the subject of larceny at common law?

GONOR.

Answer.

With some hesitation, we think that in both cases the offender can be charged with simple larceny on the assumption that the wall in the first instance is not part of the building. If it is part of a building, a charge under s. 8 of the Larceny Act, 1916, might be more appropriate.

3.—Game—*Poaching Prevention Act*, 1862, *s.* 2—*Forfeiture of guns—Have justices a discretion?*

If a person is convicted under s. 2 of the above Act, the justices being satisfied that he has unlawfully been on land in search or pursuit of game, are the justices bound to order that guns found on the defendant at the time should be forfeited?

My justices have refused on occasions to order the confiscation of the guns, and the police have objected. This is of course a very old statute, and although it states that a convicted person "shall . . . forfeit and pay any sum not exceeding £5" it is presumably no longer imperative for the justices to impose a fine since they can now place on probation, or discharge either absolutely or conditionally. My justices take the view that they are not bound to order the guns to be forfeited, the forfeiture being a maximum penalty which need not necessarily be imposed. They are, I think, greatly influenced by consideration of the fact that if a person is caught poaching on private land and is convicted he may be fined a sum not exceeding £2, and the guns cannot be confiscated (Game Act, 1831, s. 30). If, however, the police see him trespassing but wait until he walks on to the highway before stopping him, the accused on conviction may then be fined a maximum of £5, and what may be a pair of extremely valuable guns may be forfeited.

Will you please advise generally on this point, and at the same time let me know whether there are any decided cases upon this question of confiscation.

HAYORD.

Answer.

In our view, the words ". . . and shall forfeit such game, guns, parts of guns, nets and engines" are mandatory, and the justices have no discretion. It is true that the justices need not impose the maximum fine or, indeed, impose a fine at all, since they are entitled, by s. 3 of the Criminal Justice Act, 1948, to put the offender on probation, or, by s. 7 of the Act, to discharge him absolutely or conditionally, but we regard this as the limit of their discretion. Even if the offender is dealt with by one of the three latter methods, the justices must make an order of forfeiture, since s. 12 of the 1948 Act, although relieving the offender of any disqualification or disability, does not mention forfeiture. On this point, *see* a P.P. at 114 J.P.N. 480.

We appreciate the justices' views on the different Acts governing poaching, but we think that the legislature must have been aware of the effects likely to follow, and the justices must administer the law as they find it.

4.—Highway—*Erosion—Restoration of width.*

Down the X valley runs a river which, in time of flood, carries much water with great scouring power. Many years ago, and certainly before 1948, a manufacturing company used to tip refuse from its furnaces into the river, with the result that, where the river ran along the company's retaining wall, a promontory was created in the river bed which is now overgrown with substantial trees and bushes and which, in turn, forced the river towards its other bank. Some seven years ago A bought a house on the river bank a little way above the point in the river where the refuse has been tipped. That house was approached by a roadway along the edge of the river bank opposite the company's retaining wall and tipping point. When A purchased his house a furniture van was able to drive along the roadway, and more recently the baker's van and the coalman's lorry have been able to reach the house by that road. During the last few winters, however, the force of the waters diverted by the promontory have caused erosion so great that the roadway has become too narrow

to be used by vehicular traffic, and tradesmen are now refusing to deliver goods by vehicles to A's premises. You are asked to advise:

1. What legal rights has A against the company, bearing in mind that their tipping into the river ceased more than six years ago,

2. What right has A against the local River Board under the River Boards Act, 1948, or otherwise, to compel the Board to take steps to abate the erosion and reinstate the eroded bank?

3. Generally.

POMTO.

Answer.

1. None, in our opinion.

2. The River Board may be asked to remedy the matter, but it cannot be compelled to do so.

3. If the road is a highway repairable by the inhabitants at large, the highway authority may repair it. If it is not, the owners of the soil may do so. The previous part of the query speaks of abating the erosion and reinstating the eroded bank, and it therefore seems right to say that we do not think the highway authority can be compelled to do this, even if the highway is repairable by them: *see R.* v. *Greenhow* (1876) 35 L.T. 363.

5.—Licensing—*New on-licence—Condition authorizing sale outside permitted hours in district—Whether effective.*

The owners of a golf course hold a licence for the sale of intoxicants at their club-house, such sale being limited to certain hours and to players using the course.

The permitted hours in licensed premises in the district under s. 101 of the 1953 Act are 10.30 *a.m.* to 2.30 *p.m.* and 6.0 *p.m.* to 10.0 *p.m.* during the winter months. During the months from October to March inclusive, the hours at the club-house are restricted by the conditions of the licence to 10.30 *a.m.* to 2.30 *p.m.* and 6.0 *p.m.* to 7.0 *p.m.* It is desired to alter the hours for sale during this period to 10.30 *a.m.* to 2.0 *p.m.* and 4.0 *p.m.* to 6.0 *p.m.*

Any variation of the conditions of the licence could apparently only be effected on an application for a new licence, the old one to be surrendered on the new grant being confirmed.

Your opinion would be appreciated on the question whether the licensing justices would have power to grant the new licence authorizing the sale of intoxicants at the club-house for a period of two hours outside the permitted hours for licensed premises in the district.

N. DOUBTFUL.

Answer.

In our opinion, the permitted hours, fixed in accordance with ss. 101–2 of the Licensing Act, 1953, apply to all licensed premises within a licensing district, and a condition attached to a licence which purports to fix different permitted hours in relation to particular premises, outside the permitted hours fixed for the district, is void.

It must not be overlooked that it is of the essential nature of any condition attached to an on-licence that the licensing justices think that the condition is "proper in the interests of the public." Our correspondent's question does not disclose that the scheme for this condition is advanced on this ground.

6.—Road Traffic Acts—*Construction and Use Regulations,* 1955 *—Responsibility for complying with regs.* 25 *and* 26.

On whom does the responsibility for complying with regs. 25 and 26 of the Road Vehicles (Registration and Licensing) Regulations, 1955, rest?

MUDA.

Answer.

These are regulations governing the equipment of motor vehicles and trailers. By s. 3 (1) of the Road Traffic Act, 1930, it is unlawful to use on any road a motor vehicle or trailer which does not comply with regulations as to its construction, weight and equipment. By s. 3 (3) any person who uses, or who causes or permits the use of, a vehicle on a road in contravention of s. 3 is guilty of an offence.

The answer to the question (which does not arise until the vehicle is used on a road) is that the responsibility rests upon any such persons, as mentioned in s. 3 (3), *supra.*

7.—Road Traffic Acts—*Taking and driving away—Vehicle damaged—Charge under Malicious Damage Act,* 1861, *s.* 51.

A and B take and drive away a motor car without the owner's consent. The vehicle is subsequently found damaged to the extent of £70. Neither A nor B is the holder, nor has ever been the holder, of a licence to drive a motor car. There is no evidence to show how the vehicle was driven from the time it was taken away until it was found damaged. In addition to the charge to be preferred under s. 28 of the Road Traffic Act, 1930, I am asked to advise whether a further charge can be preferred under s. 51 of the Malicious Damage Act, 1861. It has been submitted that, as both defendants were not licensed to drive a motor car and must have known they would have difficulty in driving and controlling the car, recklessness and wanton disregard for the owner's property can be properly inferred.

Will you please advise whether a charge under s. 51 could be substantiated:

1. In the circumstances mentioned above;

2. If evidence was available of reckless or careless driving by A and B;

3. If A and B had been licensed to drive and evidence was given of reckless or careless driving in addition, of course to any further charge under ss. 11 or 12 of the Road Traffic Act, 1930.

JOLOC.

Answer.

We do not think that the fact that neither A nor B held a driving licence carries the matter very far and we consider that before a charge under s. 51 is considered there must be evidence that the damage was caused while A and B were in control of the car. On the facts given it might have been caused by someone else after they had abandoned the car.

Also one must have regard to the definition of "malice" approved by the Court of Criminal Appeal in *R.* v. *Cunningham* [1957] 2 All E.R. 412 at p. 414, that malice in a statutory definition of a crime must be taken not in the old vague sense of wickedness in general but as requiring either (i) an actual intention to do the particular kind of harm in fact done or (ii) recklessness as to whether such harm shall occur or not (*i.e.,* the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it.)

The answers to the questions asked are, therefore:

1. No.

2. Possibly, but only if the evidence of recklessness is such as to lead to an inference that a reasonable person must have foreseen the likelihood of damage being caused and yet have continued to take the risk.

3. As for 2.